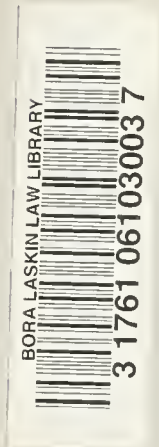




UNIVERSITY OF
TORONTO
FACULTY OF LAW



COMPETITION POLICY

Paul Collins & Carolyn Naiman

Fall 2007

Faculty of Law

University of Toronto

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Competition Policy

(LAW 312H1F)

Paul Collins & Carolyn Naiman

First Term: 3 Credits; 2 Hours

Schedule: (Th: 8:30 – 10:20)

This course will be taught at the law school and is open to both law students and honours and graduate students in economics. It is assumed that law students taking the course have a basic grounding in microeconomics. This counts as a perspective course for law students.

The purpose of this course is to explicate and explore the implications of economic theory for various aspects of competition policy. The course will focus on Canadian competition policy, but the policies of the United States and the European Union will also be examined. The course will review the economic theory in order to provide a framework for evaluating the legal treatment of various practices.

Topics to be addressed include: the economics and non-economic goals of competition policy; collusion, price fixing and facilitating practices; horizontal mergers; monopoly and monopolization; price discrimination and predatory pricing; vertical restraints including resale price maintenance, exclusive dealing, tying, and territorial restrictions.

Evaluation: Students will write a 20 page paper on a topic of their choosing (80%). The balance of the evaluation (20%) will be based on class participation and five written comments on the readings. Students are responsible for handing in comments on five topics over the course of the term. The comments should be 1-2 pages (double-spaced, twelve point font, ordinary margins) in length and should discuss critically the readings, or, more likely, some subset of the readings, for that topic. The comments are due at the beginning of the class in which we first discuss the relevant topic.

Note: “Students agree that by taking this course all required papers may be subject to submission for textual similarity review to the Turnitin.com reference database solely for the purpose of detecting plagiarism of such papers. The terms that apply to the University’s use of Turnitin.com service are described on the Turnitin.com web site”.

Readings: The following sets out the readings from the Casebook (CB) and from our textbook (TB), Trebilcock et al., *The Law and Economics of Canadian Competition Policy* (Toronto: University of Toronto Press, 2002), for each topic. We recommend skimming the appropriate sections of statutes for each topic, and these are included in the appendix to the casebook for that purpose. Because it will sometimes take more than one class to cover a topic, we will assign specific readings for the next week at the end of each class.

Class 1 (September 6)

Introduction

- History of Canadian competition policy
- Overview of the *Competition Act*
- The role of economics in competition/antitrust law and policy
- Introduction to the key antitrust areas to be explored: mergers, conspiracy, abuse of dominant position, horizontal agreements and vertical restraints
- Brief review of basic economic concepts relevant to the practice of competition law (efficiency, competitive markets, monopoly, oligopoly, monopsony)

Required Reading

TB: Chap. 1: Canadian Competition Policy in Historical Perspective (skim)

TB: Chap. 2: Basic Economic Concepts

Class 2 (September 20)

Agreements Among Competitors I

- The economics of horizontal agreements
- Proving conspiracy

Required Reading

TB: Chap. 3: Multi-Firm Conduct: Horizontal Agreements, pp. 86-103

CB: *Atlantic Sugar, Imperial Chemical Industries, Interstate Circuit*

Class 3 (September 27)

Agreements Among Competitors II

- The economics of horizontal agreements
- *Per se* illegality, horizontal versus vertical arrangements, market restriction, international and extraterritorial application of competition laws

Required Reading

CB: *Broadcast Music Inc., Sealy, Chemiefarma, Hartford Fire Insurance*

Class 4 (October 11)

Mergers I

- Merger economics – market definition

Required Reading

TB: Chap. 4: The Merger Review Process, pp. 131-185 (for Class 4, focus on discussion of market definition, pp. 161-173)
 CB: *Southam, Superior Propane, Staples*

Class 5 (October 18)

Mergers II

- Economic theories of mergers (unilateral theories of competitive harm; interdependence theories); general considerations
- Efficiencies defences
- Competitive impact analysis

Required Reading

TB: Chap. 4: The Merger Review Process, pp. 131-185 (for Class 5, focus on matters other than market definition, pp. 131-161, 173-185)
 CB: *Brown Shoe, General Dynamics, Superior Propane* (both FCA and Tribunal decisions), *Aerospatiale-Alenia/De Havilland*
 [Bureau's Remedies Bulletin]

Class 6 (October 25)

Predatory Pricing

- Economic theories of predatory pricing
- Tests for predation – *per se* illegality, price-cost rules, two-stage tests, other tests
- Evidentiary issues relevant to an investigation into predatory pricing

Required Reading

TB: Chap. 5: Predatory Pricing and Price Discrimination, pp. 288-315, 329-339
 CB: *Hoffman-La Roche, Brooke Group, Air Canada*

Class 7 (November 1)

Price Discrimination

- Types of price discrimination
- Welfare considerations regarding price discrimination
- Price discrimination and competition

Required Reading

TB: Chap 5: Predatory Pricing and Price Discrimination, pp. 339-352, 368-372
 CB: *Utah Pie, Morton Salt*

Class 8 (November 15)

Vertical Restraints I (Intrabrand Competition)

- The economics of resale price maintenance: anticompetitive explanations; efficiency explanations; price ceilings; resale price maintenance versus territorial restraints

Required Reading

TB: Chap. 6: Vertical Restraints I: Intra-Brand Competition, pp. 373-399

CB: *HD Lee, Consten and Grundig*

Class 9 (November 22)

Vertical Restraints II (Interbrand Competition)

- The economics of vertical restraints in interbrand competition
- Exclusivity – efficiency explanations of exclusivity; horizontal incentives for exclusivity restrictions
- Tying – efficiency explanations, horizontal explanations
- Efficiency explanations of related instruments; horizontal explanations of related instruments

Required Reading

TB: Chap. 6: Vertical Restraints II: Intra-Brand Competition, pp. 455-476

CB: *Bombardier, Tampa Electric, D & B, BBM Bureau of Measurement*

Class 10 (November 29)

Abuse of Dominance

- Considerations under section 79 of the *Competition Act* – single firm dominance, joint dominance, product market
- Anticompetitive acts pursuant to sections 78 and 79
- Anticompetitive acts not enumerated in Section 78 – exclusivity; acquisition of rivals; predatory pricing; facilitating practices
- Remedies

Required Reading

TB: Chap. 8: Abuse of dominance, pp. 504-572

CB: *Nutrament, Canada Pipe, Microsoft*

Class 11 (December 6)

Conclusion

- Recap

IV) MERGERS I

<u>Canada (Director of Investigation and Research) v. Southam Inc.</u> , [1997] 1 S.C.R. 748.....	IV-1
<u>Canada (Commissioner of Competition) v. Superior Propane Inc.</u> , 2000 Comp. Trib. 15.....	IV-15
<u>Federal Trade Commission v. Staples, Inc., et al.</u> , 970 F.Supp. 1066 (D.D.C. 1997).....	IV-22

V) MERGERS II

<u>Brown Shoe Co. v. United States</u> , 365 U.S. 825 (1962).....	V-1
<u>United States v. General Dynamics Corp. et al.</u> , 415 U.S. 486 (1974).....	V-8
<u>Mannesmann/Vallourec/Ilva</u> , Commission Decision C-IV/M.315, O.J. No L 102/15 (1994).....	V-18
<u>Canada (Commissioner of Competition) v. Superior Propane Inc.</u> , [2001] F.C.J. No. 455.....	V-27
<u>Canada (Commissioner of Competition) v. Superior Propane Inc.</u> , [2002] C.C.T.D. No. 10.....	V-41
<u>AeroSpatiale-Alenia/De Havilland</u> , Commission Decision 91/619, O.J. L 334/42 (1991).....	V-60

VI) PREDATORY PRICING

<u>R. v. Hoffmann-La Roche Ltd.</u> (1980), 28 O.R. (2d) 164.....	VI-1
<u>Canada (Commissioner of Competition) v. Air Canada</u> , 2003 Comp. Trib. 13	VI-18
<u>Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.</u> , 509 U.S. 209 (1993)	VI-35

VII) PRICE DISCRIMINATION

<u>Utah Pie Company v. Continental Banking Company et al.</u> , 87 S. Ct. 1326 (1967)

.....	VII-1
<u>Federal Trade Commission v. Morton Salt Co.</u> , 334 U.S. 37 (1948).....	VII-4

VIII) VERTICAL RESTRAINTS I

Resale Price Maintenance

<u>R. v. H.D. Lee of Canada Ltd.</u> (1980), 57 C.P.R. (2d) 186.....	VIII-1
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Exclusive Territories

<u>Consten and Grundig v. Commission</u> , C-56, 58/64, [1966] E.C.R. I-299...	VIII-12
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IX) VERTICAL RESTRAINTS II

Exclusivity

<u>Canada (Director of Investigation and Research) v. Bombardier Ltd.</u> (1980), 53 C.P.R. (2d) 48.....	IX-1
<u>Tampa Electric Co. v. Nashville Coal Co. et al.</u> , 365 U.S. 320 (1961).....	IX-15
<u>Canada (Director of Investigation and Research) v. D&B Companies of Canada Ltd.</u> (1995), 64 C.P.R. (3d) 216.....	IX-21

Tying

<u>R.T.P.C., D.I.R. v. BBM Bureau of Measurement</u> , (1981) 60 C.P.R. (2d) 26	IX-57
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X) ABUSE OF DOMINANCE

<u>Canada (Director of Investigation and Research) v. Nutrasweet Co.</u> (1990), 32 C.P.R. (3d) 1.....	X-1
<u>Canada (Commissioner of Competition) v. Canada Pipe Co.</u> (2006 FCA).....	X-19
<u>United States v. Microsoft Corp.</u> , No. 00-5212 (D.C. Cir. 06/28/2001).....	X-28

XI) APPENDIX: STATUTES

Canadian Competition Act, R.S.C., 1985, c. C-34 (See Bureau website for complete Act).....	XI-1
Competition Bureau Discussion Paper, “Options for Amending the <i>Competition Act</i> : Fostering a Competitive Marketplace” (June 2003).....	XI-34
Speaking notes for Konrad von Finckenstein, Commissioner of Competition, “Bill C-249; An Act to Amend the <i>Competition Act</i> ” (March 2003).....	XI-48
Bill C-509.....	XI-52
Bill C-249.....	XI-53
Bill C-19.....	XI-53a
E.C. Treaty Articles, from Van der Woude, Jones and Lewis, <i>E.C. Competition Law Handbook</i> (London: Sweet and Maxwell, 1996).....	XI-54
Selected Antitrust Statutes, U.S., from Sullivan and Hovenkamp, <i>Antitrust Law, Policy, and Procedure</i> , 2 nd Edition (Charlottesville: Michie, 1989).....	XI-61